IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Criminal No. 11-1213 MCA
	)	
DENNIS J. LOVATO,	)	
	)	
Defendant.	)	

UNITED STATES' SENTENCING MEMORANDUM

The United States agreed to the sentence of 144 months reflected in Defendant Dennis J. Lovato's plea agreement after concluding that such a sentence is sufficient but not greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a). The United States asks the Court to find the same, accept the plea agreement the parties entered pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), and sentence Lovato in accordance with that agreement.

Lovato has pled guilty to Second Degree Murder for the April 15, 2011, killing of a 61-year-old man on Santo Domingo Pueblo. The victim was found brutally beaten to death in his front yard.

Lovato was arrested when tribal police stopped him as he drove erratically away from the murder scene. When tribal police took Lovato into custody, he had blood on his shirt and appeared intoxicated. Lovato admitted the blood came from a fight he had been in with the victim.

During an interview with the Federal Bureau of Investigation the following day, Lovato again admitted that he fought the victim at the victim's house. [Ex. 3 to United States' Response to Defendant's Motion to Suppress at 5: PSR at ¶ 13.] Lovato stated that he got a "big 'ole cut" on his knuckle from hitting the victim in the face. During the interview, he described himself as a "big dude," which is a fair assessment – he stands 6'3" and weighed 265 lbs. at the time of his arrest. The victim was 61 years old, 5'6" tall, and weighed 178 lbs. when he died. Lovato further admitted that he kicked the victim twice in the face, and he acknowledged that he hit the victim with his fists eight or nine times while the victim was lying on the ground. [Ex. 3 to United States' Response to Defendant's Motion to Suppress at 34-35, 37-39, 48; PSR at ¶ 13.] Based on other evidence in the case, the interviewing agents also asked Lovato if, after initially beating the victim, Lovato got back into his vehicle before getting back out to beat the victim again. Lovato claimed not to remember for sure but acknowledged he may have done so. [Ex. 3 to United States' Response to Defendant's Motion to Suppress at 56.]

The victim was found lying dead in his yard, with his face surrounded with a halo of his own blood. All forensic evidence confirms that the victim did not move from the time he started bleeding – bleeding Lovato admits during his interview that he caused – to the time he died.

In statements to law enforcement and through his counsel, Lovato made claims that he was defending himself from the victim. At times, this included suggestions that the victim had threatened him with a knife. [PSR at ¶ 13.] The evidence did not bear out that claim, but it seemed clear that Lovato would use it at trial to seek either an acquittal or conviction on a lesser included offense.

Before entering the plea agreement, the United States closely reviewed the evidence and the law, and discussed this disposition with the victim's son. During a call with undersigned counsel, the victim's son indicated that, although no sentence would be enough to make right what happened, he did not object to the plea.

The proposed sentence of 144 months is lower than the advisory guideline sentence if Lovato pled to the indictment without an agreement, but is well above the advisory guideline sentence for a plea to Voluntary Manslaughter. The sentence of 144 months also falls above the low end of the advisory guideline sentence if Lovato was convicted of Voluntary Manslaughter at trial.

Finally, the United States believes 144 months incarceration for a defendant in his late 30s without a prior felony conviction serves the purposes of sentencing under § 3553(a). This sentence reflects the seriousness of the offense, which involved taking a human life, and will deter criminal conduct both by this defendant and other people similarly situated to him who learn the consequences Lovato faced for this violence. The punishment also fits within the sentences available for the crime and will not result in unwarranted sentencing disparities among similarly situated defendants. Rather, the sentence is consistent with sentences defendants have received in similar cases following a guilty plea.

WHEREFORE, the United States requests that the Court accept the plea agreement, sentence Lovato to 144 months in accordance with that agreement, and provide such further relief as the Court deems just and proper.

Respectfully submitted,

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Electronically filed on 2/4/14
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I HEREBY CERTIFY that I filed the foregoing pleading electronically through the CM/ECF system which caused counsel for defendant to be served by electronic means, as reflected on the Notice of Electronic Filing, and other methods of service as indicated therein on February 4, 2014.

________/s/
MARK T. BAKER
Assistant U.S. Attorney